



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R01-UST-2019-0420; FRL-10000-57-Region 1]

Maine: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Maine's Underground Storage Tank (UST) program submitted by the Maine Department of Environmental Protection (ME DEP). This action also codifies EPA's approval of Maine's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of **[INSERT**

DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* hanamoto.susan@epa.gov.
3. *Mail:* Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912.
4. *Hand Delivery or Courier:* Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA-R01-UST-2019 -0420. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal Web site, <http://www.regulations.gov>, is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment

directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, might be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy.

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; by appointment only; tel: (617) 918-1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, (617) 918-1219, hanamoto.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Maine's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

B. What decisions has the EPA made in this rule?

On October 12, 2018, in accordance with 40 CFR 281.51(a), Maine submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Maine's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to Maine's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Maine program provides for adequate enforcement of compliance (40 CFR 281.11(b)).

The statement of certification from the Attorney General asserts that the State “possesses authority over UST activities on Indian lands in the State” pursuant to the Act to Implement the Maine Indian Claims Settlement (“Maine Implementing Act” or “MIA”), 30 M.R.S. Sections 6201 to 6214, and the Federal Maine Indian Claims Settlement Act (“MICSA”), 1980 Pub. L. 96-420 (Oct. 10, 1980).

Under basic principles of Federal Indian law, states generally lack civil regulatory jurisdiction within Indian country as defined in 18 U.S.C. Section 1151. *Alaska v. Native Village Of Venetie Tribal Government*, 522 U.S. 520, 527 n.1 (1998). Thus, EPA cannot presume a state has authority to regulate in Indian country, including with regard to UST activities. Instead, a state must demonstrate its jurisdiction, and EPA must determine that the state has made the requisite demonstration and expressly determine that the state has authority, before a state can implement a program in Indian country.

Based on the unique jurisdictional framework established in MIA, MICSA, and the two companion laws for the Aroostook Band of Micmacs¹ and Houlton Band of Maliseet Indians,² EPA has previously determined that the State of Maine has civil regulatory jurisdiction in Indian country in two contexts. In 2012, EPA determined that the State has jurisdiction to issue National Pollution Discharge Elimination System (“NPDES”) permits under the Clean Water Act in the territories of the Penobscot Indian Nation and Passamaquoddy Tribe. 77 FR 23481, 23482 (April 19, 2012); *see also Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007); 78 FR 13339, 13349 (“EPA proposes to approve

¹ Aroostook Band of Micmacs Settlement Act (ABMSA), 1991 Pub. L. 102-171 (Nov. 26, 1991); Micmac Settlement 30 M.R.S. Sections 7210, et seq.

² 1980 Pub. L. 96-420; M.R.S. section 6205-A.

the state to implement its NPDES program in the territories of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs....”). In 2015, EPA determined that the State has authority to set water quality standards under the Clean Water for waters in Tribal lands. February 2, 2015, Letter from H. Curtis Spalding, EPA Regional Administrator, to Patricia W. Aho, Maine Department of Environmental Protection Commissioner, Re: Review and Decision on Water Quality Standards Revisions, available at https://www.epa.gov/sites/production/files/2016-04/documents/me_let_020215.pdf.

In recognition of the significant time and resources needed to address the State’s assertion of authority to regulate UST activities on Tribal lands, the EPA is not making a determination on such authority as part of this decision. This approach allows EPA to move forward with approval of the State’s program elsewhere in the State while it continues to work on the State’s assertion in Tribal lands. EPA is committed to acting on the State’s assertion of authority. It will do so following the necessary consultation with the federally recognized Indian tribes in Maine, consistent with Executive Order 13175 (Nov. 6, 2000) and EPA’s Policy on Consultation and Coordination with Indian Tribes (May 4, 2011).

Therefore, the EPA grants Maine final approval to operate its UST program with the changes described in the State Application, and as outlined below in Section I.G of this document, except as is relates to USTs on Indian lands.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Maine, and they are not

changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final, the EPA is publishing a separate document in the “Proposed Rules” Section of this issue of the Federal Register that serves as the proposal to approve the State’s UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Maine previously been approved?

On June 11, 1992, the EPA finalized a rule approving the UST program, effective July 13, 1992, to operate in lieu of the Federal program. On February 21, 1996, effective April 22, 1996, the EPA codified the approved Maine program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA’s inspection and enforcement authorities under RCRA Sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

On October 12, 2018, in accordance with 40 CFR 281.51(a), Maine submitted a complete application for final approval of its UST program revisions adopted on September 26, 2018. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Maine's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Maine final approval, except as it relates to USTs on Indian lands, for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	691(5)(B)(1), (4), (6), (6-A); (5)(C); (7)(B); (8)(B)(1), (4); (10)(B)(1), (3) and (10)(C)
40 CFR 281.31, Upgrading Existing UST Systems	691(5)(B)(1); (5)(C)(3), (4); (7)(D); and (10)(C)
40 CFR 281.32, General Operating Requirements	691(5)(B)(1)(b); (5)(D)(3), (4), (6)(a), (7)(f), (g), (12), (14), (16); (7)(C)(1), (4), (5), (6); (8)(B)(1)(f); (8)(C)(1), (3), (4); (10)(B)(1)(b); (10)(D)(1), (2), (9); Appendix A; Appendix M; and Appendix N;
40 CFR 281.33, Release Detection	691(5)(B)(2), (3), (7); (5)(C)(1), (2), (3); (5)(D)(1), (2), (7), (8), (9); (7)(B)(4); (7)(C)(2); (7)(D); (8)(B)(1)(e), (2), (3); (8)(C)(1), (3); (10)(A)(2); (10)(B)(2); (10)(C); (10)(D)(1); Appendix B; Appendix E(7); and Appendix E(9)
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	691(5)(D)(10), (11); (7)(C)(3); (8)(C)(1), (3); (10)(A)(2); and (12)(A)(2)
40 CFR 281.35, Release Response and Corrective Action	691(12)(A)(6); (12)(B)(1); (12)(C)(1), (2); (12)(C)(4); and (12)(E)

40 CFR Section 281.36, Out-of-service Systems and Closure	691(11)(A); (11)(B); and (11)(F)
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	691(5)(D)(15)(a), (b), (c), (d), (e), (f), (h), (i), (k), (o); (7)(C)(8); (8)(C)(1), (3); and (10)(A)(2)
40 CFR 281.40, Legal Authorities for Compliance Monitoring	38 M.R.S. Section 342-B
40 CFR 281.41, Legal Authorities for Enforcement Response	Maine Rule of Civil Procedure 80K, Section 4 (O); 38 M.R.S. Section 348(1), (3); 38 M.R.S. Section 349(2), (6), (8); 38 M.R.S. Section 347-A(1), (3); 38 M.R.S. Section 565-A(1); and 38 M.R.S. Section 568(3)

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The ME DEP has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Maine Revised Statutes Annotated, Title 4: Judiciary, Title 5: Administrative Procedures and Services, Title 14: Court Procedure – Civil, Title 17: Crimes, Title 38: Waters and Navigation.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law:

A facility owner or operator may use the Maine Ground and Surface Waters Cleanup and Response Fund in accordance with the eligibility requirements and financial assurance limits of the *Oil Discharge Prevention and Pollution Control Law*, 38 M.R.S. Section 551 and the *Oil*

Storage Facilities Groundwater Protection Law, 568-A, in combination with one or more of the other mechanisms to assure full coverage of third party damage liability in accordance with the minimum financial assurance requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Sections 5(D)(15)(a) and (b) in meeting the State's and EPA's financial responsibility requirements for underground storage tanks containing petroleum.

The owner of a facility is responsible for ensuring that the entire facility is inspected annually for compliance. The facility owner shall submit annual inspection results to the Commissioner on each July 1st, unless the Department agrees to an alternate schedule for submittal that is no less frequent than once every 12 months. The inspection results must be recorded on a form provided by the Commissioner and must include a certification statement, signed by a Certified Underground Oil Storage Tank Installer or Inspector. The statement must certify that the entire facility was inspected and any deficiencies discovered have been corrected.

A tank and its associated piping must be taken out of operation and properly abandoned upon the expiration date of the tank warranty. When the length of the tank warranty is either unknown or the tank was installed after January 1, 2008, the tank will be deemed to have a tank warranty of 30 years from the date of installation. An extension may be granted if the tank, its associated piping and other facility components pass integrity testing. Single walled waste oil tanks and their associated piping are required to be taken out of operation and properly abandoned by October 13, 2019. A deed notation is required for all tanks and piping abandoned in place. All abandoned facilities and tanks used for the storage of Class I liquids that require removal must be removed under the direct, on-site supervision of a certified underground storage tanks installer.

New or replacement tanks and piping at heating oil or process oil storage facilities used for consumption on the premises or by the owner or operator are required to be constructed of fiberglass, cathodically protected steel, or other noncorrosive material approved by the Commissioner. All tanks and piping must be secondarily contained with continuous interstitial space monitoring. Tanks with a capacity over 1,100 gallons must have spill and overflow prevention equipment.

Only a properly certified Underground Oil Storage Tank Installer with the appropriate class of certification and that has paid the required certification fee may install an underground oil storage facility. The Certified Installer shall be present and supervise all aspects of the underground storage tank facility installation, including the excavation and replacement of a concrete pad, backfill, or soil within ten feet of an underground oil storage tank or facility product piping. Within 30 days of installation completion, the Certified Installer is responsible for providing the Commissioner with a certification that the facility, materials, design, and installation are in compliance with all State requirements.

Tanks are prohibited from installation within one foot of bedrock. In sensitive geologic areas with known contamination, bedrock blasting during installation may not occur without the Department's approval.

For all new installations and replacements of tanks and piping the facility owner shall maintain a to-scale, as-built drawing of the facility at the facility or the owner's primary place of business. The drawing is to show the location of tanks, piping, dispensers and other major underground facility components to facilitate safe facility maintenance, repairs, replacement, and remediation. No permanent structures, underground utilities or other objects may be installed or constructed near a tank such that it would impede the tank's safe removal.

If a tank is replaced, all associated underground piping not meeting the design requirements of Chapter 691 shall be replaced. Underground piping meeting the requirements of Chapter 691 must be precision tested in accordance with Appendix B prior to continued use. If product piping is replaced and structural damage to the associated tank has occurred, impairing its physical integrity, the tank must also be replaced or repaired. Tanks that cannot be repaired must be abandoned in accordance with Chapter 691, Section 11.

Repairs of a galvanic cathodic protection system must be completed by a Maine Certified Underground Oil Storage Tank Installer (Certified Installer) within 180 days of a failed test. If anodes are added to a tank, the Certified Installer shall submit written documentation that all repairs were conducted in accordance with recommended practices of STI or NACE. Testing and recalibration of overfill and spill prevention alarms and shutoff systems must be conducted by a Certified Installer or Maine Certified Underground Oil Storage Tank Inspector (Certified Inspector) who is also certified by the manufacturer of the equipment if available. Repairs of automatic overfill and spill prevention alarm and shutoff systems must be done by a Certified Installer or for certain minor repairs a Certified Inspector within 30 days. Repairs, other than corrosion induced or product incompatibility caused leaks, to fiberglass, cathodically protected steel and other approved noncorrosive material tanks and piping must be properly conducted by a Certified Installer. The Certified Installer must also be certified by the tank or piping manufacturer, when available, to conduct a repair without a manufacturer representative, so as not to void the manufacturer warranty.

New and replacement underground waste oil facilities may not be located beneath a building or other permanent structure or within 25 feet of a classified body of surface water.

At least 60 days prior to new and replacement field constructed underground oil storage tank registration, design and installation plans must be submitted to the Commissioner for review and approval. The tank must be designed by a professional engineer in compliance with Maine's professional regulation statute, and constructed in accordance with UL Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks", and API Standard 650 "Welded Steel Tanks or Oil Storage". All phases of assembly and installation must be supervised by the professional engineer. Within 30 days of installation completion, the engineer shall submit a certification to the Commissioner stating that the facility materials, design, and installation meet all applicable State requirements. If a tank is replaced, all associated piping not meeting the design and installation requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Section 8. (Chapter 691, Section 8.) must be replaced except if the piping is part of an airport hydrant piping system. Piping connected to field constructed tanks must be designed and constructed in accordance with the requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Sections 5., 6., 7., 9., or 10. depending on the type of facility and piping system proposed. If product piping attached to a field constructed tank is replaced and structural damage to the associated tank occurred impairing its physical integrity, the tank must also be replaced if not designed and installed in accordance with Chapter 691, Section 8.

New or replacement tanks at facilities storing heavy oils; oil that must be heated during storage, including but not limited to #5 and #6 oil; and #4 oil only when it must be heated during storage, must be installed in accordance with National Fire Protection Association Code 31 and the requirements of Chapter 691, Section 6(B)(4), (5), and (6), except that the installation of copper and PVC piping is prohibited and the heating system must be electrically isolated from the cathodic protection system if the tank is steel. All facility construction materials must be

compatible with the temperature at which the product is to be stored. Fiberglass or plastic jacketed component may not be installed in facilities where the oil temperature will exceed 150°F. Only a properly certified Class 2 underground storage tank installer may install an underground heavy oil storage facility. New and replacement fiberglass and plastic jacketed steel tanks must have continuous product temperature monitoring equipment which must be tested, and if necessary, calibrated at least annually. If a tank is replaced, all associated underground piping not meeting the design requirements of Chapter 691 must be replaced. Any replacement piping must be designed and installed in accordance with Chapter 691. If product piping is replaced and structural damage to the tank has occurred, the associated tank must also be replaced if not constructed of fiberglass, cathodically protected steel, or other noncorrosive material approved by the Commissioner. Repairs of damaged fiberglass, cathodically protected steel, and other Commissioner approved tanks may only be made if conducted in accordance with Chapter 691, Sections 5(D)(13) or (14). Tanks that cannot be repaired must be abandoned in accordance with Chapter 691, Section 11.

At least 60 days prior to new or replacement airport hydrant piping registration, installation plans must be submitted for Department review and approval. New and replacement airport hydrant piping must be designed by a professional engineer and constructed in accordance with American National Standards Institute (ANSI) standard for “Chemical Plant and Petroleum Refinery Piping”, ANSI/ASME B 31.1. New and replacement airport hydrant piping must be installed according to good engineering practices using radiograph inspected welded joints and under the supervision of a professional engineer licensed in Maine or otherwise working in compliance with 32 M.R.S. Sections 1351 – 1362. Within 30 days of installation completion the professional engineer is required to submit to the Commissioner a certification

that the materials, design, and installation meet the applicable Chapter 691 Rules for Underground Oil Storage Facilities requirements. Repairs of new, replacement and existing piping must in accordance with good engineering practice and under the surveillance of a Maine professional engineer. The repaired section must be tested for leaks and for proper operation of the cathodic protection system. A report describing the repairs made and test results must be submitted to the Commissioner for approval.

More Stringent Provisions

The following statutory and regulatory provisions are considered more stringent than the Federal program and are therefore enforceable as a matter of Federal law:

Tank registrations require additional information from the Federal notification requirements, such as depth to bedrock and water table (when known), proximity to sensitive areas, site drawing, manufacturer warranty date.

New and replacement spill buckets must be double walled.

If more than 25% of a piping run is replaced, the entire piping run must be replaced with piping that meets the current new piping standards.

Methods of leak detection for tanks and piping that are not allowed include: for tanks, manual tank gauging, groundwater monitoring and vapor monitoring and for piping, line tightness testing.

Walkthrough inspections are conducted weekly.

Sump testing and the correction of any deficiencies must be certified by a Maine Certified Underground Oil Storage Tank Installer or Inspector.

All new and replacement field constructed tanks must have secondary containment, continuous interstitial space monitoring, and overflow and spill prevention equipment. New or replacement field constructed tank piping must have secondary containment regardless of the size of the field constructed tank.

New and replacement airport hydrant piping must have secondary containment and continuous interstitial space monitoring.

Wastewater treatment tank systems and aboveground oil storage tanks associated with field constructed tanks and airport hydrant systems are required to be registered and meet financial assurance for corrective action and third-party insurance for discharges.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under Sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Maine's UST program?

EPA incorporated by reference the Maine DEP approved UST program effective April 22, 1996 (61 FR 6555; February 21, 1996). In this document, EPA is revising 40 CFR 282.69 to include the approved revisions.

C. What codification decisions have we made in this rule?

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Maine statutes and regulations described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 1 office (see the **ADDRESSES** Section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Maine's approved UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the Maine UST program addressed in this direct final rule become final. The document incorporates by reference Maine's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Maine program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Maine program.

EPA is incorporating by reference the Maine approved UST program in 40 CFR 282.69. Section 282.69(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations, except as it relates to USTs on Indian lands.

Section 282.69 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of

Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Maine's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved states. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Maine procedural and enforcement authorities. Section 282.69(d)(1)(ii) of 40 CFR lists those approved Maine authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.69(d)(1)(iii) lists for reference and clarity the Maine statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Maine's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Maine's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). As discussed above, EPA is not acting on approval to operate the State’s UST program as it applies to Tribal lands in the State. Therefore, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law

for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective [*insert date 60 days after the date of publication in the Federal Register*] because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: September 13, 2019.

Dennis Deziel,
Regional Administrator,
EPA Region 1.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.69 to read as follows:

§ 282.69 Maine State-Administered Program.

(a) The State of Maine is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Maine Department Environmental Protection (ME DEP), was approved by

EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Maine program on June 11, 1992, which was effective on July 13, 1992.

(b) Maine has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Maine must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Maine obtains approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notification of any change will be published in the Federal Register.

(d) Maine has final approval for the following elements of its program application originally submitted to EPA and approved effective July 13, 1992, and the program revision application approved by EPA, except as it relates to USTs on Indian lands, effective on [insert date 60 days after the date of publication in the Federal Register].

(1) *State statutes and regulations--(i) Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Maine regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from the Staff to the Board of Underground Storage Tank Installers, Maine DEP, 17

SHS, Augusta, ME 04333-0017; Phone number: 207-287-7688; Hours: Monday-Friday, 8:00am to 5:00pm; website for statutes and regulations:

<https://www.maine.gov/dep/waste/ust/lawsrules.html>.

(A) “Maine Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, September 2018.”

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *Maine Revised Statutes, Title 4: Judiciary; Chapter 5: District Court; Section 152.* District court, Civil jurisdiction; 6-A N. All laws administered by the Department of Environmental Protection.

(2) *Maine Revised Statutes, Title 14: Court Procedure -- Civil, Chapter 711: Equity Proceedings.*

(3) *Maine Revised Statutes, Title 17: Crimes, Chapter 91: Nuisances, Section 2794.* Dumping of oil.

(4) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 2. Department of Environmental Protection, Subchapter 1. Organization and Powers, Section 342. 7. Representation in court, Section 342. 11-B. Revoke or suspend licenses and permits, Section 346. Judicial appeals, Section 347-A. Violations, Section 348. Judicial enforcement, and Section 349. Penalties.*

(5) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2-A. Oil Discharge Prevention and Pollution Control*, Section 550. Enforcement, Penalties.

(6) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2-B. Oil Storage Facilities and Ground Water Protection*, Section 565-A. Authority to prohibit product delivery; Section 568. 3. Issuance of clean-up orders; Section 568. 4. Enforcement, penalties, punitive damages, Section 570-C. Municipal ordinances, powers limited.

(7) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 13-D: Wellhead Protection*, Section 1397. Enforcement.

(B) The regulatory provisions include:

(1) 06-096, *Maine Department of Environmental Protection, Chapter 691, Rule for Underground Oil Storage Facilities*: 4. O. Registration of Underground Oil Storage Facilities; 5. D. (11)(e) Leak or discharge reporting requirements; 12. A. (3) Discharge and leak investigation, response and corrective action; 14. Severability.

(2) *The Maine Rules of Civil Procedure*, Rule 24. Intervention, Rule 80K. Land Use Violations.

(iii) *Provisions not incorporated by reference*. The following specifically identified statutory and regulatory provisions applicable to the Maine's UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3.

Protection and Improvement of Waters, Subchapter 2-A. Oil Discharge Prevention and Pollution

Control: Section 551. Maine Ground and Surface Waters Clean-up and Response Fund;

(B) Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3.

Protection and Improvement of Waters, Subchapter 2-B. Oil Storage Facilities and Ground

Water Protection: Section 563. 9. Annual compliance inspection.; Section 564. 5. Mandatory for replacement.; Section 565. Regulation of underground oil storage facilities used for consumption on the premises or by the owner or operator; Section 566-A. 5. Abandonment of underground oil storage facilities and tanks; Section 567. Certification of underground tank installers; Section 570 -I. Budget approval;

(C) 06-096, Maine Department of Environmental Protection, Chapter 691, Rule for

Underground Oil Storage Facilities: 5. B. (4)(a), (d), (g), (h), and (j) General facility installation requirements; 5. B. (5)(b) Installation requirements for new and replacement tanks; 5. D. (3)(f) Operation and Monitoring Requirements for Galvanic Cathodic Protection Systems; 5. D. (6)(b) Overfill and spill prevention; 5.D.(14)(c) Repairs other than relining; 5. D. (15)(f) (vii) Financial responsibility requirements; 5. D. (17) Annual compliance inspection requirements; 5. D. (19)(b) Safe excavation requirements; 5. F. Mandatory facility closure upon expiration of warranty; 6. Regulation of heating oil facilities used for consumption on the premises or by the owner or operator; 7. B. (7) Design and installation standards for new and replacement facilities; 8. B. (1)(d) and (e) Design and installation requirements for new and replacement tanks, 8. B. (4)(b), (d), and (e) General installation requirements, 9. B. (4) Installation requirements for new and replacement heavy oil facilities, 10. B. (1)(c) General design and construction requirements, 10.

B. (3)(b), (f), and (h) General installation requirements, and 10. D. (2) Operation, maintenance, testing and inspection requirements for new, replacement and existing systems.

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of Maine on December 5, 1991, and October 12, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on November 27, 1991, and as part of the program revision application for approval on October 13, 2018 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on November 27, 1991, and as part of the program revision application on October 13, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the Maine Department of Environmental Protection, signed by the EPA Regional Administrator on November 21, 2018 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for Maine to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Maine

(a) The statutory provisions include:

Maine Revised Statutes Annotated, Title 38. Waters and Navigation

1. Chapter 2. *Department of Environmental Protection*, Subchapter 1. Organization and Powers

Section 341-A. Department of Environmental Protection, Section 341-H. Departmental rulemaking, Section 342-B. Liability of fiduciaries and lenders, Section 343-E. Voluntary response action program, Section 347-C. Right of inspection and entry.

2. Chapter 3. *Protection and Improvement of Waters*, Subchapter 2-A. Oil Discharge Prevention and Pollution Control.

Section 541. Findings; purpose, Section 542. Definitions, Section 543. Pollution and corruption of waters and lands of the State prohibited, Section 548. Removal of prohibited discharges.

3. Chapter 3. *Protection and Improvement of Waters*, Subchapter 2-B. Oil Storage Facilities and Ground Water Protection.

Section 561. Findings, purpose, Section 562-A. Definitions, Section 563. Registration and inspection of underground oil storage tanks and piping, except 9., Section 563-A. Prohibition of nonconforming underground oil storage facilities and tanks, Section 563-B. Regulatory powers of department, Section 564. Regulation of underground oil storage facilities used to store motor fuels or used in the marketing and distribution of oil, except 5., Section 566-A.

Abandonment of underground oil storage facilities and tanks, Section 567-A. Certifications,

Section 568. Cleanup and removal of prohibited discharges, except 3. and 4., Section 568-A. Fund coverage requirements, Section 568-B. Clean-up and Response Review Board created, Section 569-C. Limited exemption from liability for state or local governmental entities, Section 570. Liability, Section 570-F. Special provisions, Section 570-K. Aboveground oil storage facilities, Section, Section 570-N. Rules, wastewater treatment tank systems.

4. Chapter 13-D: Wellhead Protection.

Section 1391. Declaration of Policy, Section 1392. Definitions, Section 1393. Prohibition on installation of facilities in wellhead protection zones, Section 1394. Variances, Section 1398. Eligibility for Clean-up funds, Section 1399. Municipal authority, Section 1400. Rules.

(b) The regulatory provisions include:

1. *06-096, Maine Department of Environmental Protection, Chapter 691, Rule for Underground Oil Storage Facilities*: (effective September 26, 2018)

Section 1. Legal Authority, Section 2. Preamble; Section 3. Definitions, Section 4. Registration of Underground Storage Facilities, except O; Section 5. Regulation of Underground Oil Storage Facilities Used to Store Motor Fuels or Used in the Marketing and Distribution of Oil, except B. (4)(a), (d), (g), (h), and (j); (5)(b); D. (3)(f); (6)(b); (11)(e); (14)(c); (15)(f)(vii); (17); (19)(b); and F.; Section 7. Regulation of Facilities for the Underground Storage of Waste Oil, except B. (7); Section 8. Regulation of Field Constructed Underground Oil Storage Tanks, except B. (1)(d) and (e) and (4)(b), (d), and (e); Section 9. Regulation of Facilities for the Underground Storage of Heavy Oils, except B.; Section 10. Regulation of Airport Hydrant Systems, except B. (1)(c); (3)(b), (f), and (h); and D. (2); Section 11. Regulations for Closure of Underground Oil Storage Facilities; Section 12. Discharge and Leak Investigation, Response and Corrective Action Requirements, except A. (3); Section 13. Regulation of Wastewater Treatment

Tank Systems and Aboveground Oil Storage Tanks, APPENDIX A: Requirements for Cathodic Protection Monitoring, APPENDIX B: Requirements for Tank, Piping and Containments Sump Tightness Tests, APPENDIX C: Requirements for Pneumatic (Air) and other Pre installation Tightness Testing, APPENDIX D: Installation Requirements Applicable to New and Replacement Tanks, APPENDIX E: Installation Requirements for New and Replacement Piping, APPENDIX F: Specifications and Requirements for Vertical Ground Water Monitoring Wells at Existing Facilities, APPENDIX H: Procedures for Weekly Monitoring, Handling, and Obtaining Samples for Laboratory Analysis, APPENDIX I: Sample Daily Inventory Reporting Log, APPENDIX J: Requirements for Abandonment of Underground Oil Storage Tanks by Removal, APPENDIX K: Requirements for Abandonment of Underground Oil Storage Tanks by Filling in Place, APPENDIX L: Requirements for Underground Oil Storage Tank Processing Facilities, APPENDIX M: Cathodic Protection Tester Certification Requirements, APPENDIX N: Corrosion Expert Certification Requirements, APPENDIX P: Requirements for Site Assessment at Facility Closure or Tank Abandonment, APPENDIX Q: Characterization and Notification Requirements, APPENDIX R: List of National Standards and Codes Cites, APPENDIX S: Department Approved Laboratory Analytical Methods and Performance Standards for Analysis of Oil and its Constituents in Water, Soil, Soil Gas and Indoor Air, APPENDIX T: Containment Sumps & Spill Bucket Integrity Testing Protocol & Management of Waste Fluids.

2. 06-096, Department of Environmental Protection; Chapter 693: Operator Training for Underground Oil, Hazardous Substance, and Field Constructed Underground Oil Storage Facilities, and Airport Hydrant Systems (effective September 26, 2018) only insofar as they pertain to the regulation of underground storage tanks in Maine and only insofar as they are incorporated by reference and are not broader in scope than the Federal requirements.

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[FR Doc. 2019-21200 Filed: 10/2/2019 8:45 am; Publication Date: 10/3/2019]